

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Title: Door Latching System

Inventor: Breslin et al.

Serial No.: 09/884,706

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Examiner: Lugo, Carlos

Group Art Unit: 3676

Mail Stop AF
Commissioner for Patents
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**PETITION UNDER 37 CFR §1.181
TO WITHDRAW HOLDING OF ABANDONMENT**

In response to the Notice of Abandonment dated February 14, 2007, Applicants hereby submit this Petition and request the Director to withdraw the holding of abandonment.

The Notice of Abandonment (the "Notice") states that the application was abandoned in view of "Applicant's failure to timely file a proper reply to the Office letter mailed on 12 May 2006." The Notice is based on the Examiner's assertion that Applicants' reply (which was timely filed on Monday, November 13, 2006) did not constitute a proper reply to the final rejection. Specifically, the Examiner has asserted that the reply fails to place the application in a condition for allowance after the final Office Action mailed on May 12, 2006 ("Office Action"). (*See* Advisory Action before the Filing of an Appeal Brief mailed on December 1, 2006 ("Advisory Action")). For the reasons set forth below, Applicants respectfully submit that the Amendment and Response to Office Action dated May 12, 2006 ("Response") was a complete and proper reply and request that the holding of abandonment be withdrawn.

STATEMENT OF FACTS

1. On May 12, 2006, the Office mailed to Applicants' attorney of record the Office Action. In the Summary on page 1 of the Office Action, the Examiner indicated that the action was final and expressly listed the disposition of the claims as follows:

Claims 1-29 are pending in the application.

Claims 30-42 are withdrawn from consideration.

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Claims 1, 5, 15, 16, 18, 19 and 23-25 are rejected.

Claims 2-4, 6-14, 17, 20-22 and 26-29 are objected to.

2. At page 3 of the Office action, the Examiner stated that claims 1, 5, 6, 15, 16, 18, 19 and 23-25 were rejected based on 35 U.S.C. § 103(a).

3. At page 4 of the Office Action, the Examiner indicated that the claims to which the Examiner objected included allowable subject matter. Specifically, the Examiner stated that claims 2, 3, 12, 26 and 29 would be allowable if written in independent form and that claims 4, 6-11, 13, 14, 17 20-22, 27 and 28 would be allowed.

4. On November 13, 2006, Applicants filed an Amendment and Response to the Office Action (the "Response"). By that document, Applicants attorney canceled all of the claims that the Examiner had listed as rejected on page 1 of the Office Action, i.e., claims 1, 5, 15, 16, 18, 19 and 23-25. In the Remarks section, Applicants specifically referenced the status of those claims as rejected.

5. Also by the Amendment and Response, the Applicants amended claims 2, 3, 6, 12, 26 and 29 to put those claims into independent form to address the stated grounds of the Examiner's objections.

6. On December 1, 2006, the Office mailed the Examiner's Advisory Action. In that correspondence the Examiner stated that the reference to claim 6 on page 4 of the Office Action (which indicated claim 6 had been objected to) was a typographical error. The Examiner noted that claim 6 was rejected at page 3 of the Office Action and suggested that Applicants should have discovered the error in the Office Action and contacted the Office. The Examiner concluded that the application is not in a condition for allowance, apparently because Applicants did not cancel claim 6 but instead amended it to respond to the objection set forth on page 4 of the Office Action. The Examiner did not address the fact that, in addition to the objection to claim 6 stated on page 4 of the Office Action, the summary on page 1 of the Office Action also states that claim 6 had been objected to and not rejected.

POINTS TO BE REVIEWED

Applicants request the Director to review the holding of abandonment. In replying to an Office Action, an applicant is required to make such a complete and proper reply as the condition of

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the application may require. 37 CFR § 1.135. On the other hand, the Office has recognized that in rejecting claims under 35 U.S.C. § 103(a) “it is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply” and “it is important that the written record clearly explain the rationale for decisions made during prosecution of the application.” See MPEP §§ 706.02(j). Applicants respectfully submit that, at best, the Office Action was ambiguous as to whether claim 6 had been rejected.

Applicants’ attorney of record attempted to address all of the issues raised by the Examiner. In at least two places, the Office Action stated that claim 6 was only objected to, not rejected. Given those references, Applicants inadvertently overlooked the reference to claim 6 on page 3 of the Office Action. Applicants’ addressed that objection to claim 6 by amending the claim. Given the requirement that any rejection be clear, Applicants respectfully submit that their reply was a complete and proper reply to the Office Action.

Applicants’ intended to address all of the points raised by the Examiner in the Office Action. Thus, if necessary to place this application in condition for allowance, Applicant authorizes the Director to cancel claim 6, which the Applicant would have done had there not been typographical errors in the original Office Action.

ACTION REQUESTED

In view of the foregoing, Applicant respectfully requests the withdrawal of the Notice of Abandonment and the allowance of this application.

Applicant believes there is no fee for filing this Petition. However, if there is a fee, the Commissioner is hereby authorized to charge any fee required to Deposit Account No. 503289.

Dated: April 13, 2007

Respectfully submitted,

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